

IN THE
Supreme Court of the United States

No. 71-674

LAKE SHORE AUTO PARTS CO., an Illinois Corporation, on its own behalf and also as representative of a class of corporations and other "non-individuals",

Appellant and Petitioner,

vs.

BERNARD J. KORZEN, County Treasurer and ex-officio County Collector of Cook County, GEORGE M. KEANE and HARRY H. SEMROW, Members of the Board of Appeals of Cook County, P. J. CULLERTON, County Assessor of Cook County, EDWARD J. BARRETT, County Clerk of Cook County, and ROBERT J. LEHNHAUSEN, Director, Department of Local Government Affairs of the State of Illinois,

Appellees and Respondents.

No. 71-685

ROBERT J. LEHNHAUSEN,

Petitioner,

vs.

LAKE SHORE AUTO PARTS, et al.,

Respondent.

No. 71-691

EDWARD J. BARRETT, County Clerk of Cook County, Illinois, et al.,

Petitioners,

vs.

CLEMENS K. SHAPIRO, et al.,

Respondents.

CONSOLIDATED RESPONSE TO JURISDICTIONAL STATEMENT FILED IN CASE NO 71-691, AND TO JURISDICTIONAL STATEMENT AND, IN THE ALTERNATIVE, PETITION FOR WRIT OF CERTIORARI FILED IN CASE NO 71-674, AND REPLY TO MOTION TO STRIKE ON THE BRIEF IN OPPOSITION TO CASES NOS. 71-674, 71-685 AND 71-691.

In each of the proceedings herein consolidated, the petitioners have requested that this Court issue a writ of certiorari to the Illinois Supreme Court to review its decision in the consolidated proceeding, which decision is attached hereto as Appendix "A". In that decision, the Illinois Supreme Court ruled that Article IX-A, being a recently adopted amendment to the Illinois Constitution of 1870 which purported to relieve individuals of *ad valorem* personal property taxes while leaving corporations subject to those taxes, was unconstitutional in that it violated the Equal Protection clause of the Fourteenth Amendment to the United States Constitution. The effect of the Illinois court's decision was to reimpose personal property taxes on individuals as well as corporations. Each of the petitioners in the actions here consolidated would have this Court reverse the decision of the Illinois Supreme Court.

The Illinois Supreme Court had before it an appeal in the case entitled *Lake Shore Auto Parts Co., et al. v. Korzen, et al.*, wherein the Honorable Walter P. Dahl, of the Circuit Court of Cook County, had held that while Article IX-A was constitutional, it had the effect of making certain provisions of the Revenue Act of the State of Illinois unconstitutional and that neither corporations nor individuals were subject to *ad valorem* personal property taxes. That decision is attached hereto as Appendix "B".

In the case entitled *Clemens K. Shapiro, et al. v. Barrett, et al.*, the Honorable Thomas J. Donovan of the Circuit Court of Cook County had held that Article IX-A was constitutional and that its effect was to exempt from personal property taxes such property as was owned by individuals and used solely for their pleasure and convenience and that of their families. That decision is attached as Appendix "C".

The third action before the Illinois Supreme Court was an original action entitled *Eugene Maynard, et al. v. Barrett, et al.*, in which plaintiffs took the position that the amendment to the Illinois Constitution of 1870 known as Article IX-A was unconstitutional and that, therefore, the original Article IX was still in effect and there could be no discrimination between corporations and individuals in the imposition of *ad valorem* personal property taxes.

The majority decision of the Illinois Supreme Court (Appendix "A") agreed with the arguments of plaintiffs in the *Maynard* case. Mr. Justice Davis filed a dissent (Appendix "D") in which he found that Article IX-A was constitutional and that it was permissible to exempt individuals from *ad valorem* personal property taxation while retaining such taxes on corporations.

Pending before this Court in Case No. 71-685 is the petition filed on behalf of Robert J. Lehnhausen, Director of Local Governmental Affairs of the State of Illinois (one of the parties defendant in the *Lake Shore* case). In his petition, Director Lehnhausen requests this Court to reverse the decision of the Illinois Supreme Court and to direct the Illinois Supreme Court either to affirm the decision of Judge Donovan of the Circuit Court of Cook County or, to adopt as the majority decision the dissent of Justice Davis.

In the petition in Case No. 71-691 (*Barrett v. Shapiro*), the State's Attorney of Cook County on behalf of the various Cook County officials represented by him, also asks this Court to reverse the decision of the Illinois Supreme Court and to hold that Article IX-A, being an amendment to the Illinois Constitution of 1870, is valid and exempts individuals from *ad valorem* personal property taxes while retaining such taxes upon corporations.:

In the third proceeding before this Court, Case No. 71-674, entitled *Lake Shore Auto Parts v. Korzen*, the petitioner also requests that the decision of the Illinois Supreme Court be reversed, but presumably would request that the decision of Judge Dahl be affirmed.

The plaintiffs who filed the *Maynard* action have here filed a consolidated motion opposing the positions of the petitioners in each of the three actions consolidated here, and would ask this Court to either refuse to accept the petitions for writs of certiorari or to affirm the decision of the Illinois Supreme Court.

The Governor of the State of Illinois has, in Case No. 71-685, filed an *amicus curiae* brief supporting the petition for writ of certiorari filed by this petitioner.

This petitioner respectfully submits that the arguments set forth in the petitioner's petition for writ of certiorari and the argument set forth by Governor Ogilvie in his *amicus curiae* brief are correct and should be persuasive.

For the reasons set forth, both in this petitioner's petition and in the *amicus curiae* brief filed in support of that petition, petitioners respectfully request this Court to grant the petition and to issue a writ of certiorari to the Illinois Supreme Court and to reverse that decision with directions that either the opinion of the Honorable Thomas J. Donovan of the Circuit Court of Cook County be affirmed, or that the dissenting opinion of Mr. Justice Davis of the Illinois Supreme Court be adopted as the majority decision.

Respectfully submitted,

WILLIAM J. SCOTT,

*Attorney for Robert J. Lehnhausen,
Director of Local Government Affairs,
of the State of Illinois.*

FRANCIS T. CROWE,
CALVIN C. CAMPBELL,
Of Counsel.

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APPENDIX "A"

LAKE SHORE AUTO PARTS CO.,
an Illinois Corporation, et al.,

Appellees,

v.

BERNARD J. JORZEN, County
Treasurer and ex officio County Col-
lector of Cook County, et al.,

Appellants.

EUGENE L. MAYNARD, et al.,

Plaintiffs,

v.

EDWARD J. BARRETT, County
Clerk of Cook County, et al.,

Defendants.

CLEMENS K. SHAPIRO, et al.,

Appellants,

v.

EDWARD J. BARRETT, County
Clerk of Cook County, et al.,

Appellees.

Nos. 44199, 44308,
44432 Cons.

Mr. JUSTICE SCHAEFER delivered the opinion of
the court.

These consolidated cases present issues concerning the
construction and the validity of Article IX-A which was
added to the Constitution of 1870 by referendum vote at
the November 1970 election. On June 30, 1969, the Sen-
ate and the House of Representatives concurred in the

adoption of Senate Joint Resolution No. 30, which provided for the submission of the proposed amendment to a referendum vote. Senate Joint Resolution No. 30 (Senate Journal, June 30, 1969, p. 3476) is as follows:

SENATE JOINT RESOLUTION NO. 30

Resolved, By the Senate of the Seventy-sixth General Assembly of the State of Illinois, the House of Representatives concurring herein, that there shall be submitted to the electors of the State for adoption or rejection at the next election of members of the General Assembly of the State of Illinois, in the manner provided by law, a proposition to add Article IX-A to the Constitution, the added Article to read as follows:

ARTICLE IX-A

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals*.

SCHEDULE

Paragraph 1. This amendment shall become effective January 1, 1971.

The explanation of the amendment which appeared upon the referendum ballot is as follows:

"The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870, Article IX-A, thus setting aside existing provisions in Article IX, Section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations."

Subsequently, on May 19, 1970, the Senate adopted Senate Joint Resolution No. 67 (Senate Journal May 19, 1970,

p. 6) which contained a further statement of the intention of the General Assembly in adopting Senate Joint Resolution No. 30. Senate Joint Resolution No. 67 was concurred in by the House of Representatives on May 29, 1970 (Senate Journal May 29, 1970, p. 149). It reads as follows:

Senate Joint Resolution No. 67

RESOLVED, BY THE SENATE OF THE SEVENTY-SIXTH GENERAL ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF REPRESENTATIVES CONCURRING HEREIN, that, in adopting Senate Joint Resolution No. 30, which submits to the electors of this State a constitutional amendment prohibiting the taxation of personal property by valuation as to individuals, it was the intention of this General Assembly to abolish the ad valorem taxation of personal property owned by a natural person or by two or more natural persons, and that, by the use of the phrase "as to individuals", this General Assembly intended to mean a natural person, or two or more natural persons as joint tenants or tenants in common.

The first of the three consolidated actions that are before us was filed by Lake Shore Auto Parts Co., a corporation, on December 9, 1970. The complaint named as defendants the county clerk of Cook County, the county assessor, the county collector and the members of the board of appeals of that county, as well as the director of the Department of Local Government Affairs of the State. It alleged that it was filed as a class action on behalf of the plaintiff (hereafter Lake Shore) and on behalf of all other corporations and other "non-individuals" subject to personal property tax. It asserted that the new Article IX-A violates the fourteenth amendment to the Constitution of the United States because its effect "is to

exonerate from ad valorem personal property taxation, on and after January 1, 1971, all personal property owned by 'individuals', while authorizing and requiring the continued ad valorem taxation of all personal property owned by entities other than 'individuals.' " It also alleged that the provisions of Article IX-A immediately became a part of and amended the Revenue Act of 1939, so that that statute "imposes ad valorem taxes only with respect to personal property owned by corporations and other entities which are not 'individuals' within the meaning of said Article IX-A." The complaint prayed for a decree "finding and declaring that the provisions of the Revenue Act of 1939 * * *, as amended by Article IX-A of the Constitution of Illinois, are unconstitutional, invalid and unenforceable insofar and to the extent that such statute purports to impose ad valorem taxes with respect to personal property owned by plaintiff and all corporations and other 'non-individuals' who are members of the class which plaintiff represents." An injunction, as well as relief appropriate to a class action, was also sought.

The answers of the defendants denied the legal conclusions asserted by the plaintiff. They did not admit the allegations that related to the representative character of the action, but they did not dispute any allegations of fact that related to the basic issues.

All parties moved for summary judgment, and the trial court entered an order on March 30, 1971, granting the basic relief prayed for in the complaint, but reserving jurisdiction to determine the class aspect of the action. The order also found that Article IX-A is not applicable to personal property taxes, the assessment of which was commenced prior to January 1, 1971. The defendant, Robert J. Lehnhausen, Director of the Department of Local

Government Affairs of the State of Illinois, has appealed, and the plaintiff has cross appealed from that portion of the order that related to the particular taxes to which the court's order was applicable.

A petition seeking leave to file an original action in this court was filed on May 10, 1971 on behalf of Eugene L. Maynard, "a natural person, citizen and taxpayer of the State of Illinois," and also on behalf of one high school district and three grade school districts. Leave to file was granted on May 12, 1971. The defendants are those state and county officers who are defendants in the Lake Shore case. The complaint, which sought a declaratory judgment and other relief, alleges the adoption of Article IX-A. It is suggested that "the *Lake Shore* case will come to the Court in a flawed condition in that it will not properly present the parties and arguments essential for a full determination of the important revenue question. * * * Without the presence of Eugene L. Maynard, neither the presence nor the position of a natural person will be adequately presented to this Court." The complaint alleged that it was filed by Maynard, who is alleged to own non-business personal property, on behalf of himself and all others similarly situated. It also alleged that it was filed on behalf of the named public bodies for themselves and all other public bodies which receive proceeds from personal property taxation.

The deficiencies in parties and in legal arguments in the *Lake Shore* case is said to lie in the fact that the only plaintiff in that case is a corporation, and in the fact that the complaint in that case does not contain a direct request for a declaration of the unconstitutionality of Article IX-A. "The pleadings of that case place into question only certain sections of the Illinois Revenue Act. The

attack is made upon these sections as affected by the passage of Article IX-A rather than upon the constitutionality of the Article itself. * * * If the Court considers the *Lake Shore* case without additional parties and arguments, it may be foreclosed from ruling on the central issue of constitutionality of the Amendment."

No new facts were alleged in the Maynard case, and the defendant Lehnhausen has conceded the factual questions and filed a brief to stand as its answer in this case. The brief on behalf of the defendant county officers appears similarly to have been intended to stand as a motion to dismiss the complaint.

Another action was instituted by a complaint for declaratory judgment which was filed in the circuit court of Cook County on May 8, 1971, on behalf of several plaintiffs. Clemens K. Shapiro alleged that he is a natural person who owns personal property in his own name and real property jointly with his wife, none of which property is owned or used for purposes of business, and all of which property is owned and used for his personal enjoyment and that of his family. Jerome Herman alleged that he is a natural person and operates and conducts a business as a sole proprietor. Guy S. Ross and Eugene D. Ross allege that they are natural persons and operate, as a partnership, a business which owns property. M. Weil and Sons, Inc., a corporation, alleges that it is the owner of property situated in Cook County.

The complaint alleges that each of the plaintiffs is acting in a representative capacity on behalf of all others similarly situated. The defendants are those state and county officers who were named in the Lake Shore complaint. The complaint alleges the adoption of Article IX-A and asserts various interpretations of that Article, some of which are

advanced by all of the plaintiffs and others by one or another of the plaintiffs. To this complaint the defendant Lehnhausen, Director of the Department of Local Government Affairs, filed a motion to dismiss on May 9, 1971. He also filed a "Petition for Instructions" which recited that the Lake Shore and Maynard cases were pending in the Supreme Court of Illinois, asserted that the issues in all of the three cases were substantially the same, and that it "would appear to be a duplication of effort for this Court to consider the issues involved in the case at bar [the Shapiro case] while at the same time the Illinois Supreme Court has essentially the same issues before it for consideration." The petition for instructions suggested that the Shapiro case be held in abeyance for the determination of the cases already pending before the Supreme Court. No order was entered with respect to this petition. On May 19, 1971, a motion to strike was filed in behalf of the defendant county officers. On May 28, 1971, an order was entered, by a judge other than the judge who heard the Lake Shore case, finding that the action was properly maintained as a class action and that each plaintiff had standing to bring the action in its own behalf and was a proper representative of the class he purported to represent. The order found that Article IX-A "is free of the ambiguity and uncertainty of intendment charged by the plaintiffs, and that its intendment is clearly declared to prohibit the taxation of personal property by valuation exclusively as to natural persons, where that property is used, by them, for the personal enjoyment of themselves and their families." Except as to the plaintiff Clemens K. Shapiro and members of his class, the complaint was dismissed. All of the plaintiffs in the Shapiro case have appealed from this judgment.

The plaintiffs in the Maynard and Shapiro cases justify the institution of their actions upon the ground that there are deficiencies as to parties and as to legal propositions in the Lake Shore case which might, without the assistance which they volunteer to supply, preclude the possibility of full consideration of the issues by this court. That it is not necessary that each person or group of persons favorably or unfavorably affected by a legislative classification be made parties to an action challenging the validity of that classification is apparent. Major cases involving discrimination of the sort here alleged have not required the presence, as parties, either in person or by representative, of all those affected. See, *e.g.*, *Lawrence v. State Tax Com. of Miss.* (1932), 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102.

There are no factual issues in the present cases, and the order of this court which consolidated the Lake Shore and Maynard cases provided: "Counsel may brief and argue all issues as to the validity and effect of the constitutional amendment known as Article IX-A of the Constitution of 1870." (See *Hux v. Raben* (1967), 38 Ill. 2d 223.) Additional class actions were not necessary to place before the court all pertinent legal theories. We shall, however, consider the arguments advanced by counsel in those cases.

Neither the plaintiffs in the Maynard case nor those in the Shapiro case are content with the interpretation of Article IX-A arrived at by Judge Walter P. Dahl in the Lake Shore case. That interpretation was that the new Article "purports to prohibit the taxation of personal property by valuation as to 'individuals', and only as to 'individuals,' while leaving unaffected those provisions of the Illinois Constitution and the Revenue Act of Illinois . . . which imposed such personal property taxes as to

property owned by corporations and other 'non-individuals.' "

One alternative construction, advanced by the plaintiffs in the Shapiro case, is that the "Illinois' Constitution of 1870, as amended by the addition of Article IX-A, specifically prohibits, and declares to be unconstitutional the imposition in Illinois of the property taxes imposed by Article IX, Section 1, on all forms of property, real and personal or other, regardless of the ownership of that property or the use to which that property is put by its owner." This construction is achieved by disregarding the fact that Article IX-A is clearly concerned only with the taxation of personal property, and by concentrating upon the fact that the last sentence in the official explanation which appeared upon the ballot at the election on November 3, 1970, when Article IX-A was approved, mentioned taxes upon both real and personal property. That explanation was as follows:

"The amendment would abolish the personal property tax by valuation levied against individuals. It would not affect the same tax levied against corporations and other entities not considered in law to be individuals. The amendment would achieve this result by adding a new article to the Constitution of 1870, Article IX-A, thus setting aside existing provisions of Article IX, Section 1, that require the taxation by valuation of all forms of property, real and personal or other, owned by individuals and corporations."

The last sentence of the explanation, however, is not a part of the amendment, and its reference to real property taxes was made in describing the existing provisions of Article IX, Section 1, which are modified by Article IX-A.

Based upon the circumstance that the phrase "as to individuals" is printed in italics in Article IX-A, the May-

nard plaintiffs turn to materials other than the legislative explanations in a search for a technical meaning. They say: "The unusual circumstance that the words 'as to individuals' are italicized in the constitutional amendment, an unprecedented practice in constitutional drafting, strongly suggests that the General Assembly, in drafting Senate Joint Resolution No. 30 used the word 'individuals' as one having established technical significance and usage in the classification of taxpayers upon whom personal property taxes have been imposed."

They purport to find the technical meaning that they seek in the circumstance that two different forms, administratively prescribed, have been used for personal property tax returns. One form is to be used by "individuals, partnerships, and unincorporated associations owning or controlling personal property used in agriculture, and all individuals owning or controlling any personal property which is not owned or used in connection with any business (other than agriculture) * * *." The other form is to be used by "[p]roprietorships, partnerships and unincorporated associates engaged in business (other than agriculture) * * *." On the assumption that the word "individuals" was intended to have an established technical meaning because it was printed in italics, the Maynard plaintiffs, and the Shapiro plaintiffs as well, argue that the word "individuals" was used to denote a class of natural persons owning personal property not used in business.

There is, however, a more prosaic explanation for the fact that the words "as to individuals" are printed in italics. When Senate Joint Resolution No. 30 was originally introduced on April 29, 1969, the proposed Article IX-A read as follows: "Notwithstanding any other provision of

this Constitution, the taxation of personal property by valuation is prohibited." (Senate Journal, April 29, 1969, p. 1038.) On May 15, 1969, Senate Joint Resolution No. 30 was amended "by striking the period and adding the following: 'as to individuals.'" Senate Journal, May 15, 1969, pp. 1407-8.

The added words were placed in italics in accordance with routine legislative practice, which contemplates that in the case of amendments, new material is to be italicized. The rules of the Senate of the 76th General Assembly provided: "All resolutions originated in the Senate proposing amendments to the Constitution shall be ordered printed and shall be printed in the same manner in which bills are printed." (Senate Journal, Feb. 18, 1969, p. 163.) And as to bills, they provided: "Senate Bills and House Bills in the Senate shall be printed with new matter in italics and omitted or superseded matter enclosed in brackets and underlined." Senate Journal, Feb. 18, 1969, p. 161.

There is thus no underpinning for the argument that the General Assembly intended that the word "individuals" should be given an artificial meaning. The official explanations, which are not discussed in the Maynard brief, definitely negative such an intention. We have examined the other materials to which the Maynard and Shapiro plaintiffs have referred, but have found nothing which persuades us that the words of Article IX-A should be given anything other than their natural meaning.

We conclude that the meaning of Article IX-A is that ad valorem taxation of personal property owned by a natural person or by two or more natural persons as joint tenants or tenants in common is prohibited.

The Maynard case plaintiffs and all of the Shapiro case plaintiffs, with the exception of Shapiro, contend that Ar-

ticle IX-A, so construed, violates the equal protection clause of the fourteenth amendment to the constitution of the United States. Lake Shore contends that it is the Revenue Act, which must be regarded as amended by Article IX-A, rather than the Article itself, which violates the equal protection clause. We shall first consider the basic question of the validity of the discrimination effected by Article IX-A.

The new Article classifies personal property for the purpose of imposing a property tax by valuation, upon a basis that does not depend upon any of the characteristics of the property that is taxed, or upon the use to which it is put, but solely upon the ownership of the property. If the property is owned by A, it is taxable; if it is owned by B, it cannot be taxed. Of course, the equal protection clause of the fourteenth amendment does not prohibit classification, and absolute precision is not required of the states in drawing the lines between classes. Nevertheless, a state may not, under the guise of classification, arbitrarily discriminate against one and in favor of another similarly situated.

The Supreme Court of the United States has thus described the governing principles:

“If course, the States, in the exercise of their taxing power, are subject to the requirements of the Equal Protection Clause of the Fourteenth Amendment. But that clause imposes no iron rule of equality, prohibiting the flexibility and variety that are appropriate to reasonable schemes of state taxation. The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products. It is not required to resort to close distinctions or to maintain a precise, scientific uniformity with reference to composition, use or value. *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232, 237;

Magoun v. Illinois Trust & Savings Bank, 170 U.S. 283, 293; * * * *State Board of Tax Comm'rs of Indiana v. Jackson*, 283 U.S. 527, 537. 'To hold otherwise would be to subject the essential taxing power of the State to an intolerable supervision, hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to assure.' *Ohio Oil Co. v. Conway*, supra, 281 U.S., at 159.

"But there is a point beyond which the State cannot go without violating the Equal Protection Clause. The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule often has been stated to be that the classification 'must rest upon some ground of difference having a fair and substantial relation to the object of legislation.' *Royster Guano Co. v. Virginia*, 253 U.S. 415; *Louisville Gas & Electric Co. v. Coleman*, 277 U.S. 37; *Air-Way Electric Appliance Corp. v. Day*, 266 U.S. 71, 85; *Schlesinger v. Wisconsin*, 270 U.S. 230, 240; *Ohio Oil Co. v. Conway*, 281 U.S. 146, 160 * * *."

Allied Stores of Ohio, Inc. v. Bowers, (1959), 358 U.S. 522, 526-27, 79 S. Ct. 437, 3 L. Ed. 2d 480, 484-85.

When classifications are reasonable, it is because of differences in the nature of the property or in the use to which it is put. The nature of the tax is important, too, for what may be a reasonable classification for a license, or for a privilege tax, is not necessarily a reasonable classification for a property tax.

Mr. Justice Brandeis stated the criterion this way in his dissenting opinion in *Quaker City Cab Co. v. Pennsylvania*, 277 U.S. 389, 406, 48 S. Ct. 553, 72 L. Ed. 927, 932: "In other words, the equality clause requires merely that the classification shall be reasonable. We call that action reasonable which an informed, intelligent, just-minded, civ-

ilized man could rationally favor. In passing upon legislation assailed under the equality clause we have declared that the classification must rest upon a difference which is real, as distinguished from one which is seeming, specious, or fanciful, so that all actually situated similarly will be treated alike; that the object of the classification must be the accomplishment of a purpose or the promotion of a policy, which is within the permissible functions of the State; and that the difference must bear a relation to the object of the legislation which is substantial, as distinguished from one which is speculative, remote or negligible."

Article IX-A must be read against the scheme of property taxation established pursuant to Article IX of the Constitution of 1870, which, with respect to property taxes contemplates the levy of "a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property * * *." (Constitution of 1870, Article IX, Sec. 1.) Taxes levied by municipal corporations are required to be "uniform in respect to persons and property, within the jurisdiction of the body imposing the same." (Constitution of 1870, Article IX, Sec. 9.) The permissible exemptions from taxation are thus described. "The property of the state, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horitcultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. * * *." Constitution of 1870, Article IX, Sec. 3.

Against this background the incongruity of the prohibition contained in Article IX-A is apparent. It cannot rationally be said that the prohibition promotes any policy

other than a desire to free one set of property owners from the burden of a tax imposed upon another set. All of the arguments in favor of the abolition of the personal property tax upon the property owned by natural persons apply with equal force in favor of the abolition of that tax upon the property owned by others. For the purpose of a tax by valuation upon the ownership of real or personal property, the identity of the owner is a neutral consideration, as is his status as sole proprietor, joint tenant, tenant in common, partner (Ill. Rev. Stat. 1969, ch. 106½, par. 25), limited partnership (Ill. Rev. Stat. 1969, ch. 106½, par. 61), member of a professional service corporation (Ill. Rev. Stat. 1969, ch. 32, par. 415-1 *et seq.*), or of a professional association (Ill. Rev. Stat. 1969, ch. 106½, par. 101 *et seq.*; see Sup. Ct. Rule 721; 43 Ill. 2d, Rule 721).

We hold, therefore, that the discrimination produced by Article IX-A violates the equal protection clause of the fourteenth amendment. Apart from that discrimination, the validity of the Revenue Act is not challenged, and we hold that it is Article IX-A which must fall. The validity of Article IX of the Constitution and of the Revenue Act are therefore not affected.

The judgment of the circuit court of Cook County in No. 44199 (Lake Shore) is reversed, and the cause is remanded to that court with directions to dismiss the complaint. Insofar as the judgment of the circuit court in No. 44432 (Shapiro) dismissed the complaint as to all of the plaintiffs other than Clemens K. Shapiro, it is affirmed; insofar as that judgment sustained the complaint as to Clemens K. Shapiro, it is reversed and the cause is remanded to that court with directions to dismiss the complaint. In No. 44308 (Maynard), the complaint is dismissed.

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No. 44199. *Reversed and remanded with directions.*

No. 44432. *Affirmed in part; reversed in part, and remanded with directions.*

No. 44308. *Complaint dismissed.*

(Lake Shore Auto Parts Co. v. Korzen, Nos. 44199, 44308, 44432)

APPENDIX B

STATE OF ILLINOIS SS
COUNTY OF COOK

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT, CHANCERY DIVISION

LAKE SHORE AUTO PARTS CO.,
an Illinois corporation, on its own
behalf and also as representative of a
class of corporations and other "non-
individuals", which class is herein de-
scribed,

Plaintiffs,

vs.

BERNARD J. KORZEN, County
Treasurer and ex-officio County Col-
lector of Cook County, GEORGE E.
KEANE and HARRY H. SEMROW,
Members of the Board of Appeals of
Cook County, P. J. CULLERTON,
County Assessor of Cook County,
EDWARD J. BARRETT, County
Clerk of Cook County, and ROBERT
J. LEHNHAUSEN, Director, Depart-
ment of Local Government Affairs of
the State of Illinois,

Defendants.

No. 70 CH 5123

ORDER

This cause coming on to be heard upon the Motion for Summary Judgment of LAKE SHORE AUTO PARTS CO., an Illinois corporation, plaintiff, by and through its attorneys, ORLIKOFF, PRINS, FLAMM & SUSMAN, and upon the Cross-motion For Summary Judgment of defendant ROBERT J. LEHNHAUSEN, Director, Department of Local Government Affairs of the State of Illinois, by and through the Attorney General of Illinois, and the Cross-motion For Summary Judgment of defendants KORZEN, KEANE, SEMROW, CULLERTON and BARRETT, assessing and taxing officials of Cook County, by and through the State's Attorney of Cook County,

The Court having examined the pleadings and memoranda filed by the parties hereto, having heard the arguments of counsel and being fully advised in the premises

DOES HEREBY FIND:

1. That there is no genuine issue as to any material fact in this cause, and it is therefore appropriate and proper that the cause be determined on the Motion and Cross-motions For Summary Judgment.

2. That the plaintiff, LAKE SHORE AUTO PARTS CO., is a corporation duly organized and existing under the laws of Illinois, and on April 1, 1970, was the owner of personal property having a taxable situs in the County of Cook, which property has been included on the assessment role now being prepared by the assessing officials of Cook County for the tax year 1970; that the plaintiff has standing to bring this action on its own behalf, and it is not at this time necessary or appropriate to determine whether the action is properly brought and maintained as a class action or to determine the definition of the plaintiff class.

3. That an amendment to the Illinois Constitution of 1870, designated as Article IX-A, was approved by the people of Illinois at a reference held on November 7, 1970, and such amendment, by its terms, became effective January 1, 1971; that said Article IX-A purports to prohibit the taxation of personal property by valuation as to "individuals", and only as to "individuals", while leaving unaffected those provisions of the Illinois Constitution and the Revenue Act of Illinois (Ill. Rev. Stat. 1969, ch. 120, §482 et seq.) which impose such personal property taxes as to property owned by corporations and other "non-individuals".

4. That said Article IX-A is self-executing, and the necessary effect of the adoption thereof is to amend the various provisions of the Revenue Act of Illinois, specifically including but not limited to §18 thereof (Ill. Rev. Stat. 1969, ch. 120, §499), so as to exempt from personal property taxes thereby imposed all personal property owned by "individuals", while retaining such taxes as to personal property owned by corporations and other "non-individuals."

5. That the Revenue Act of Illinois, as so amended by Article IX-A of the Illinois Constitution, deprives the plaintiff corporation of the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States: that said Revenue Act of Illinois, to the extent that it purports to impose personal property taxes with respect to the property owned by plaintiff, is therefore unconstitutional, void and of no effect whatsoever.

6. That Article IX-A of the Illinois Constitution is not applicable with respect to personal property taxes imposed by the Revenue Act of Illinois for the year 1970, the as-

assessment date for which was April 1, 1970, and the assessment of which had been commenced prior to January 1, 1971, the effective date of Article IX-A, notwithstanding that such assessment had not been completed as of that date.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

7. The plaintiff's Motion for Summary Judgment is granted in part and denied in part, the Court declaring that the Revenue Act of Illinois (Ill. Rev. Stat. 1969, ch. 120, §§ 482 et seq.), said Revenue Act having been amended by Article IX-A of the Illinois Constitution, is violative of the Fourteenth Amendment to the Constitution of the United States and is held to be void and unenforceable insofar as said Revenue Act purports to impose personal property taxes on plaintiff.

8. The defendants' Cross-motions For Summary Judgment are granted in part and denied in part, the Court declaring that Article IX-A of the Illinois Constitution is not applicable to, and does not impair the collection of, personal property taxes imposed by the Revenue Act of Illinois, the assessment of which were commenced prior to January 1, 1971.

9. Except for those matters adjudicated by paragraphs 7 and 8 of this Order, this Court retains jurisdiction of this cause for all purposes.

10. Pursuant to Rule 304(a) of the Rules of the Supreme Court of Illinois, the Court expressly find that there is no just reason for delaying enforcement or appeal of this Order. In the event of an appeal from this Order, the Court is of the opinion that the interests of justice would be best served by hearing and deciding the appeal as expeditiously as possible because of the manifest pub-

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lie importance of the issues and the substantial amount of tax revenues that are involved.

DATED: March 30, 1971.

ENTER:

JUDGE WALTER P. DAHL,
Judge, Circuit Court of
Cook County, Illinois

APPENDIX C

STATE OF ILLINOIS SS
COUNTY OF COOK

IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT, TAX DIVISION

CLEMENS K. SHAPIRO, JEROME
HERMAN, d/b/a THE SPOT, GUY
S. ROSS AND EUGENE R. ROSS,
d/b/a GUY S. ROSS & CO., a part-
nership; and M. WEIL AND SONS,
INC., an Illinois Corporation, all in-
dividually and in representative ca-
pacity,

Plaintiffs,

vs.

EDWARD J. BARRETT, County
Clerk of Cook County; BERNARD
J. KORZEN, County Treasurer and
ex-officio County Collector of Cook
County; GEORGE E. KEANE and
HARRY H. SEMROW, Members of
the Board of Appeals of Cook County;
P. J. CULLERTON, County Assessor
of Cook County, and ROBERT J.
LEHNHAUSEN, Director, Depart-
ment of Local Government Affairs of
the State of Illinois,

Defendants.

No. 71 L 5745

ORDER

This cause appears before this Court on plaintiffs' Complaint for Declaratory Judgment, filed pursuant to Chapter 110, Section 57.1 of the Civil Practice Act. The action was filed by plaintiffs for themselves and in a representative capacity on behalf of all other persons similarly situated. The cause comes on for hearing on separate motions, to strike and dismiss that complaint, filed by County and State defendants. Defendants have elected to stand on their motions.

No genuine issue as to any material fact emerges.

The plaintiffs are:

1. Clemens K. Chapiro, is a natural person, citizen and taxpayer of the State of Illinois, resident of and a salaried employee in the County of Cook wherein he owns personal property in his own name, and owns real property jointly with his wife, none of which property is owned or used in the operation of, or for purposes of business, and all of which property is owned and used for his personal enjoyment and that of his family.
2. Jerome Herman, is a natural person, and a citizen of the State of Illinois, and as sole proprietor owns, operates and conducts a business located in Cook County, Illinois, and is the owner of property and a taxpayer herein.
3. Guy S. Ross and Eugene D. Ross, natural persons, citizens and residents of the State of Illinois, both of whom are partners, and as partners operate and conduct a business as a partnership duly organized under the laws of the State of Illinois, which busi-

ness entity is located in the County of Cook and is the owner of property and a taxpayer therein.

4. M. Weil and Sons, Inc., a corporation duly organized and existing under the laws of the State of Illinois, is located in, and is the owner of property situated in the County of Cook and a taxpayer therein.

Each of the plaintiffs is an owner of property subject to the ad valorem tax directed to be imposed by Article IX of the Illinois Constitution of 1870, and imposed by the Illinois Revenue Act of 1939, which property has been assessed by valuation and continues to be so assessed by defendants pursuant to that constitutional and statutory authority.

The electorate of this State, on November 3, 1970, adopted amending Article IX-A to the Illinois Constitution of 1870. This amendment became part of the Illinois Constitution on November 25, 1970, and reads as follows:

"Article IX-A

TAXATION OF PROPERTY

§ 1. Taxation of personal property prohibited

Section 1. Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited *as to individuals.*"

"SCHEDULE

"Paragraph 1. This amendment shall become effective January 1, 1971."

Plaintiffs contend as follows:

All plaintiffs contend that Illinois Constitution of 1870, as amended by the addition of Article IX-A, specifically prohibits, and declares to be unconstitutional the imposition, in Illinois, of the property taxes imposed by Ar-

ticle IX, Section 1, on *all* forms of property, real and personal or other, regardless of the ownership of that property or the use to which that property is put by its owner.

All plaintiffs contend that if Article IX-A does not prohibit the taxation of all property, then Article IX-A prohibits the tax to be measured by the value of the property taxed.

All plaintiffs contend that the prohibition of Article IX-A, which abolishes the imposition of property tax measured by valuation of the property taxes, extends to those taxes so measured where the assessment of plaintiffs' property has been commenced by defendants prior to, even though not completed on January 1, 1971, the effective date of Article IX-A, and payment due thereafter.

Natural Persons contend that:

The designation "individuals" in Article IX-A properly and validly describes, is intended to apply, and does apply solely to them; and the taxation by valuation prohibited in Article IX-A, if not applicable to all property owned by them, is applicable to personal property owned by them and used by them for their personal purposes; and that,

Article IX-A prohibits taxation, by valuation of personal property as to them alone, while denying that prohibition as to all others, is proper, valid, and constitutional under both Illinois Constitution and the Constitution of the United States.

Both business entities and corporations contend that:

Article IX-A, effective January 1, 1971, as an amendment to Illinois Constitution of 1870 is offensive to the Constitution of the United States.

If the designation "individuals" in Article IX-A invokes prohibition of taxes by valuation on personal property exclusively as to "natural persons" and personal property owned by them, but denies the same prohibition to business entities and corporations, then such classification is discriminatory, unreasonable and offensive both to Illinois Constitution and the Constitution of the United States. This is true for the reasons that such classification is invalidly predicated upon purported differences between *users* of identical property and the *use* to which that property is put, instead of differences found to exist between the forms of the property upon which that tax is directly laid. The employment of such base constitutes special legislation prohibited by Article IV, Section 22 of Illinois Constitution, as well as denying to business entities and corporations due process of law and the equal protection of the law guaranteed to them by Article II, Section 2 of the Illinois Constitution, and the Fourteenth Amendment to the Constitution of the United States.

Unless the exclusion of property owned by "individuals" is construed to exclude the property of business entities and corporations, as well as that of natural persons, then the employment in Article IX-A of the term "individuals" is so vague, uncertain, and incapable of definitive application to the context of Article IX, that Article IX-A must fall because it is totally absent the comprehension required, especially of constitutional provisions, by both Illinois Constitution and the Constitution of the United States.

Business entities contend that:

(a) The designation "individuals" in Article IX-A is correctly and properly described, and is intended to apply to, and does include business entities which own property because the natural person owners of that business en-

tity are personally and individually liable for the payment of that tax.

Article IX-A prohibiting taxation by valuation of property owned by such business entities, while denying that prohibition as to corporations is proper, valid and constitutional under both Illinois' Constitution and the Constitution of the United States.

Corporations contend that:

If the designation "individuals" in Article IX-A applies to any or all owners of property except corporate owners of property, then such classification is discriminatory, unreasonable, and offensive to both the Illinois Constitution and the Constitution of the United States.

Defendants contend that the taxation by valuation of real property and other property, as provided in Article IX shall continue and remain, in all regards, unaffected by Article IX-A; however:

Notwithstanding any other provision of this Constitution, the taxation of personal property by valuation is prohibited only as to natural persons; but as to them, only as to the personal property owned by them; but as to that personal property owned by them, only such of that property which is used by them for the personal enjoyment of themselves and their families.

This matter appearing on the pleadings aforesaid, presenting the issues to this Court as delineated by those pleadings, and the Court having heard arguments by all parties in support of their respective positions, **THIS COURT FINDS:**

1. That a genuine cause and controversy exists, and that this action is properly maintained under the provisions of

Chapter 110, Section 57.1 (Declaratory Judgments), Civil Practice Act, Illinois Revised Statutes, 1969.

2. Each of these plaintiffs has standing to bring this action in his or its own behalf and is a proper representative of his class.

3. That this action is properly maintained as a class action, and the members of those classes are adequately and competently represented by counsel herein.

4. That Article IX-A of the Illinois Constitution of 1870 is valid, constitutional and immune to all of the plaintiffs' assaults, both under the Illinois Constitution and the Constitution of the United States.

5. That Article IX-A is free of the ambiguity and uncertainty of intendment charged by the plaintiffs, and that its intendment is clearly declared to prohibit the taxation of personal property by valuation exclusively as to natural persons, where that property is used, by them, for the personal enjoyment of themselves and their families.

6. That these findings by this Court make it unnecessary to consider contentions made by plaintiffs in the alternative.

7. That all issues as found heretofore are found in favor of the defendants, except as to those issues relating to the plaintiff Clemens K. Shapiro and members of his class involving personal property owned and used by them for the personal enjoyment of themselves and their families.

8. That motions to strike and dismiss plaintiffs' Complaint are sustained in regards and in respect of those found in favor of the defendants, except as to those issues raised by plaintiff Clemens K. Shapiro and members of his class involving personal property owned and used by

them for the personal enjoyment of themselves and their families.

9. Pursuant to Rule 304(a) of the Rules of the Supreme Court of Illinois, the Court expressly finds that there is no just reason for delaying enforcement or appeal of this Order. In the event of an appeal from this Order, the Court is of the opinion that the interests of justice would be best served by hearing and deciding the appeal as expeditiously as possible because of the manifest public importance of the issues and the substantial amount of tax revenues that are involved.

WHEREFORE, IT IS ORDERED, ADJUDGED and DECREED that defendants' motions to strike and dismiss are sustained as to all plaintiffs, except the plaintiff Clemens K. Shapiro and members of his class, and plaintiffs' Complaint is stricken as to all issues and in all regards and respects contrary to and in variance with the judgment of this Court; that Amending Article IX-A of the Illinois Constitution is valid and constitutional in all respects and is immune to attack under any provision or provisions of the Illinois Constitution of 1870 and the United States Constitution, and that said Amending Article IX-A declares its prohibition exclusively as to any personal property tax on the personal property owned by individuals and used for their personal enjoyment and that of their families.

ENTER:

THOMAS C. DONOVAN,
Presiding Judge, Tax Division,
Circuit Court of Cook County,
Illinois.

Date: May 27, 1971

APPENDIX "D"

MR. JUSTICE DAVIS, dissenting:

The majority opinion holds that our State Constitution of 1870, as modified by Article IX-A, may not validly classify exemptions from ad valorem personal property taxation on the basis of the ownership of the property, and that such exemption may be made only upon a classification based upon the nature of the property or its use. I dissent from this pronouncement.

It is clear that the United States Constitution imposes no particular modes of taxation upon the states and leaves them unrestricted in their power to tax those domiciled within their borders so long as the tax imposed is upon property within the state, or on privileges enjoyed there, and so long as the tax is not so palpably arbitrary or unreasonable as to infringe upon the equal protection and due process requirements of the fourteenth amendment. *Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276, 284, 52 S. Ct. 556, 559, 76 L. Ed. 1102, 1105.

The majority opinion recognizes that "the equal protection clause of the fourteenth amendment does not prohibit classification, and absolute precision is not required of the states in drawing the line between classes"; and that, "nevertheless, a state may not, under the guise of classification, arbitrarily discriminate against one and in favor of another similarly situated." This general rule is found in the quotation from *Allied Stores of Ohio v. Bow-*

ers, 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480, cited by the majority. The rule has been expressed and exemplified many times in varying terms. Examples are: "Any classification of taxation is permissible which has reasonable relation to a legitimate end of governmental action." (*Welch v. Henry*, 305 U.S. 134, 144, 59 S. Ct. 121, 124, 83 L. Ed. 87, 92); "It is a salutary principle of judicial decision, * * * that the burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless, viewed in the light of facts made known or generally assumed, it is of such a character as to preclude the assumption that the classification rests upon some rational basis within the knowledge and experience of the legislators. A statutory discrimination will not be set aside as the denial of equal protection of the laws if any state of facts reasonably may be conceived to justify it." (*Metropolitan Casualty Ins. Co. v. Brownell*, 294 U.S. 580, 584, 55 S. Ct. 538, 540, 79 L. Ed. 1071, 1073.) Due process imposes no rigid rule of equality in taxation, and irregularities resulting from singling out one particular class for taxation or exemption infringe no constitutional requirement. (*Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509, 57 S. Ct. 868, 872, 81 L. ed. 1245, 1253). It is only the invidious discrimination or classification which is patently arbitrary and utterly lacking in rational justification which is barred by the due process or equal protection clauses. *Flemming v. Nestor*, 363 U.S. 603, 611, 612, 80 S. Ct. 1367, — 4 L. ed. 2d 1435, 1445.

The variety of ways of expressing the rule that a legislative classification for taxation purposes is not violative of the fourteenth amendment if it has a reasonable relation to the subject of the particular legislation so that all

persons similarly situated are treated alike, and pertinent citations, are found in 16A C.J.C. Constitutional Law, Sections 520, 521, 649.

In this litigation, as is often the case, the particular expression of the rule which the majority of the court choose to rely upon may be dictated by the outcome which the judge of the majority think to be proper. Beyond doubt, the fourteenth amendment does not impose on the states an inflexible and technical rule of equal taxation, and the extent to which the states may go in devising a legislative classification for taxation is illustrated by the statement of the Supreme Court in *Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276, 284, 285, 52 S. Ct. 556, 559, 76 L. ed. 1102, 1108:

“The equal protection clause does not require the state to maintain a rigid rule of equal taxation, to resort to close distinctions, or to maintain a precise scientific uniformity; and possible differences in tax burdens not shown to be substantial or which are based on discriminations not shown to be arbitrary or capricious, do not fall within constitutional prohibitions.”

The Supreme Court in *Lawrence* also stated that there is no constitutional requirement that a system of taxation should be uniform as applied to individuals and corporations, regardless of the circumstances in which it operates (286 U.S. 276, 283, 52 S. Ct. 556, 558, 76 L. ed. 1107), and we have just recently held that for the purpose of income taxation, corporations may be placed in one class and individuals in another and each taxed differently. (*Thorpe v. Mahin*, 43 Ill. 2d 36.) The language of the court at pages 45 and 46 is worthy of repetition.

“It is next contended that the Act violates the uniformity provision of Section 1 of Article IX of our constitution and the equal protection and due process

requirements of the fourteenth amendment to the United States constitution by creating multiple classes and discriminating unreasonably among them. This contention is advanced specifically against the provisions which tax corporations at a 4% rate and individuals, trusts, and estates at 2½% rate.

"Both the equal protection argument and the uniformity argument depend on the reasonableness of putting corporations in one class and individuals, trusts, and estates in another class for purposes of this tax. (See *Grenier & Co. v. Stevenson*, 42 Ill. 2d 289). When the due process contention has been advanced, this court, citing Supreme Court cases, has stated: 'It has long been settled that the power of the legislature to make classifications, particularly in the field of taxation, is very broad, and that the fourteenth amendment imposes no "iron rule" of equal taxation. (Citations.) The reasons justifying the classification, moreover, need not appear on the face of the statute, and the classification must be upheld if any state of facts reasonably can be conceived that would sustain it. (Citations.) The burden therefore rests on one who assails the statute to negate the existence of such facts. (Citations.)' *Department of Revenue v. Warren Petroleum Corp.*, 2 Ill. 2d 483, 489-490.

"When the uniformity contention has been advanced this court has stated: 'It is well established that the legislature has broad powers to establish reasonable classifications in defining subjects of taxation. * * * Such classification must, however, be based on real and substantial differences between persons taxed and those not taxed. (Citations.)' (*Klein v. Hulman*, 34 Ill. 2d 343, 346-347.) 'In order to prevail on an allegation that a statute or portion of a statute is unconstitutional, the plaintiff has the burden of showing how the legislature has violated the constitution.' *Grenier & Co. v. Stevenson*, 42 Ill. 2d 289, 291.

"In short, petitioners have the burden of showing that the challenged classification is unreasonable. Their

only assertion is that 'corporations are at a disadvantage when they compete in the same type of business with individual proprietorships or partnerships because of the rate differential.' This assertion has been rejected by the Supreme Court as to a Federal tax (*Flint v. Stone Tracy Co.*, 220 U.S. 107, 31 S. Ct. 342, 55 L. Ed. 389), and as to a State tax (*Fort Smith Lumber Co. v. Arkansas ex rel. Arbuckle*, 251 U.S. 532, 40 S. Ct. 304, 64 L. Ed. 396), and by this court (*People v. Franklin National Insurance Co. of New York*, 343 Ill. 336; *Michigan Millers Mutual Fire Insurance Co. v. McDonough*, 358 Ill. 575), where, for purposes of the tax in question, corporations were placed in one class and individuals in another and each were taxed differently."

The majority, however, holds that as to a property tax the classification for exemption or taxation may not be based upon the character of the ownership, but only upon the nature of the property itself. Thus, the majority is of the opinion that the classification may not be based upon the corporation—individual distinctions which we upheld in *Thorpe*.

In *Thorpe* this court reversed its prior holding that income is property (*Bachrach v. Nelson*, 349 Ill. 579), and held that an income tax was not a property tax. The significance of this determination was that Section 1 of Article IX of our Constitution of 1870 required the levying of a tax "by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property * * *." At the same time, the constitutional provisions permitted a tax upon franchises and privileges in such manner as the legislature might direct, so long as it was uniform as to each "class." Obviously, the legislature could not, under the foregoing provisions, impose

an income tax upon corporations at one rate and upon individuals at a lesser rate if it were a tax on property. Our constitution then prohibited any tax on property unless structured to be uniform as to valuation.

After reaching the conclusion that an income tax was not a property tax, the court faced no barrier in upholding the Illinois Income Tax Act. In the case at bar, after Article IX-A amendment to the Constitution of 1870 was adopted, the uniformity provisions of Section 1 of Article IX were no longer effective as to the taxation of personal property of individuals, and the court should have found no impediment to upholding the validity of Article IX-A and the abolishment of this tax as to individuals.

Constitutional provisions requiring property to be taxed uniformly in proportion to its value are not uncommon to the states. In the California Railroad Tax cases (*San Mateo County v. Southern Pacific R. Co.*, 13 Fed. 722, appeal dismissed per stipulation, 116 U.S. 138; *Santa Clara County v. Southern Pacific R. Co.*, 18 Fed. 385, aff'd other grounds, 118 U.S. 394), which held that unequal taxation, based upon the character of the owner, was forbidden by the fourteenth amendment, a constitutional provision requiring uniformity of taxation was involved. Even though the California constitution specified that all property be taxed in proportion to its value, a state statute especially provided that as to railroad properties only, the amount of a mortgage on the real estate was not to be deducted in ascertaining the value of the real estate for taxation purposes. The trial court quite properly held that this method of valuation, as to railroads only, was improper under the circumstances, and the United States Supreme Court affirmed the lower court on a non-constitutional basis without reaching the constitutional question. The California

Railroad Tax cases should be read, with cognizance, that the state constitution required all property to be taxed in proportion to its value, and that the cases arose at a time when it was necessary to establish that the word, "persons" as used in the fourteenth amendment, included corporations. Apparently, the latter point had a strong bearing on the expressions found in these cases.

In the case at bar, by virtue of the adoption of Article IX-A, there is no constitutional requirement that taxes on personal property be uniform as to individuals and corporations so that each pays a tax in proportion to the value of his or its property. Article IX-A, which we are called upon to consider, eliminated this requirement; it provides that "the taxation of personal property is prohibited as to individuals." Thus, the case at bar is a far cry from one in which the legislature is attempting to discriminate between individuals and corporations in the face of a constitutional provision prohibiting such discrimination. Here the question for determination is whether, absent the requirement of a state constitution that corporate and individual personal properties be taxed the same, the equal protection clause of the fourteenth amendment permits them to be taxed differently? I believe that it does!

Without the constitutional requirement of uniformity on the taxation of properties, there is no reason or justification in the case at bar for stating that personal property taxation may not be classified on the basis of the ownership of the property. The Constitution of 1870, as amended by Article IX-A, does not so provide, and the Constitution of 1970 suggests the contrary. Article IX of the Constitution of 1970 relates to revenue, and Section 5 thereof pertains to personal property taxation. Subsection (a) thereof provides that the legislature "may clas-

sify personal property for purpose of taxation by valuation, abolish such taxes on any or all *classes* and authorize the levy of taxes in lieu of the taxation of personal property by valuation." (Emphasis ours.) Without more, it could be said that the word "classes" refers only to classes of property, but subsection (c) refers to the abolition of all ad valorem personal property taxes by January 1, 1979, and the replacement of the lost revenue, and provides: "Such revenue shall be replaced by imposing statewide taxes, other than ad valorem taxes on real estate, solely on those *classes* relieved of the burden of paying ad valorem personal property taxes because of the abolition of such taxes subsequent to January 2, 1971." (Emphasis ours.) Obviously, the word "classes" as there used, does not refer to classes of property; it refers to classes of property owners, and provides for taxation according to the character of the owner. If the majority opinion is to stand and Article IX-A held to be unconstitutional, then under consistent application of its rationale, subsection (a) of Section 5 of the new constitution is likewise unconstitutional.

The majority opinion chose to rely upon the rationale of *Quaker City Cab Co. v. Commonwealth of Pennsylvania*, 277 U.S. 389, 48 S. Ct. 553, 72 L. ed. 927. I believe that the elucidation and logic of the dissent of Mr. Justice Brandeis, in which Mr. Justice Holmes concurred, offers the better reason. Therein, Mr. Justice Brandeis made some observations which are particularly apropos here. The court had under consideration a tax on the gross receipts of corporate taxicab companies where no similar tax was imposed upon the receipts of individuals who operated taxicabs. The majority held that the classification was based solely upon the character of the owner, and that it violated the fourteenth amendment.

In his dissenting opinion, 277 U.S. 389, 403-412, 48 S. Ct. 553, 555-558, 72 L. ed. 927,—, Mr. Justice Brandeis observed that the tax applied equally to all corporations, foreign and domestic. He stated that the fundamental question before the court was:

“Does the equality clause prevent a state from imposing a heavier burden of taxation upon corporations engaged exclusively in intrastate commerce, than upon individuals engaged under like circumstances in the same kind of business? The narrowed question presented is whether this heavier burden may be imposed by a form of tax ‘not peculiarly applicable to corporations’; that is, by a tax of such a character that it might have been extended to individuals if the Legislature had seen fit to do so.”

He then pointed out that the difference between a business carried on in corporate form and one carried on by natural persons is “a real and important one.” He observed that the discrimination was not based upon any difference in the source of income or in the character of the property employed, and stated the obvious: that the requirement that a classification must be reasonable does not imply that the policy embodied in the classification must be deemed by the court to be a wise one. He concluded that a state is permitted to impose upon corporations more than their pro rata share of the burden of taxation, and that nothing in the Federal constitution prohibits this.

It seems that this is exactly what we held in *Thorpe v. Mahin*, 43 Ill. 2d 36. We recognized what we called the obvious advantages of carrying on a business in the corporate form. The privilege of carrying on a business in this form has many advantages: the corporate ownership of property, freedom from personal liability for corporate obligations, continuity of existence, etc. There we acknowl-

edged that there are sufficient differences between the privilege of earning or receiving income as a corporate entity and that of earning or receiving income as an individual, to justify the variance in tax rates between the individual and the corporation, and here we should recognize that there are sufficient differences between the privilege of owning property as a corporate entity and the privilege of owning it as an individual to justify the exemption in the case of the individual property owner. The fact that the corporation may in some respects be placed at a disadvantage in its competition with individuals owning similar property and engaged in the same business should not condemn the classification as unreasonable. *Thorpe v. Mahin*, supra, 46.

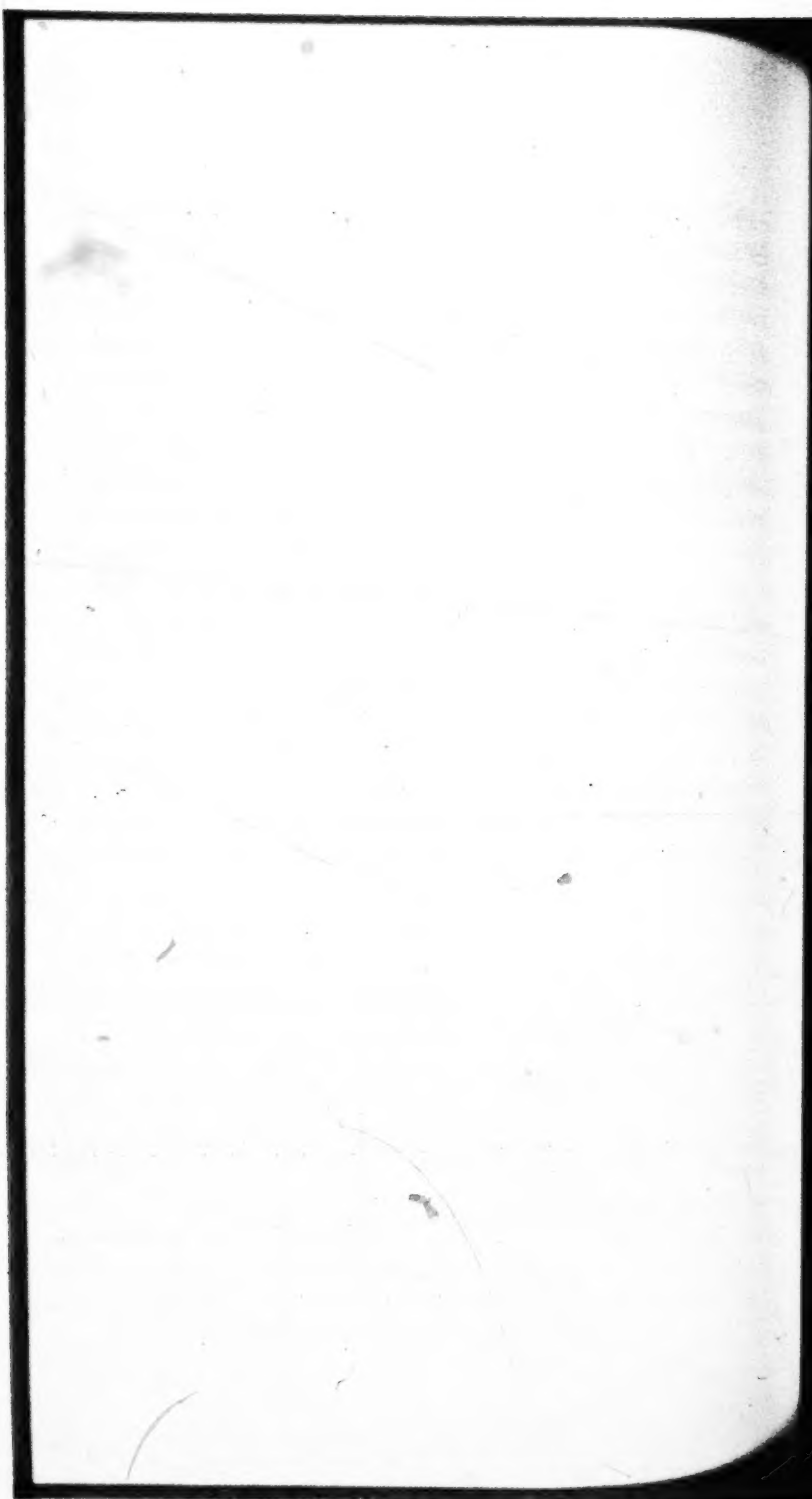
There is no more compelling reason to suggest that the classifications for personal property tax purposes must be based upon the nature of the property than there is to suggest that the classifications for income tax purposes must be based on the source or type of income to be reported. The Article IX-A constitutional amendment creates a classification based upon the distinctions inherent between corporations and individuals—a distinction which we have recognized and upheld as valid under the equal protection clause requirement of the fourteenth amendment in *Thorpe v. Mahin*.

Another matter is worthy of mention in our consideration of this case. The evils and the inequities in the administration of the personal property tax collections in this State are known to everyone. That these inequities apply with equal force to corporate taxpayers and individual taxpayers may, or may not, be totally true. The desire and purpose of systematically eliminating this archaic form of taxation are apparent from the actions of the

people and the legislature of the State. The General Assembly, which drafted and adopted Senate Joint Resolution No. 30, had previously at the same legislative session already exempted from such taxation, household furniture and one automobile, per household, used for personal pleasure. (Ill. Rev. Stat. 1969, ch. 120, par. 500.21a.) The Article IX-A amendment was overwhelmingly ratified by the people of the State. The Constitution of 1970, likewise adopted by the vote of the people, expressed their concern over the form and use of personal property taxation. The newly-adopted constitution prohibits the reinstatement of any ad valorem personal property tax abolished before July 1, 1971, the effective date of the new constitution. This provision refers to the personal property tax as to individuals which was abolished by Article IX-A, and the majority opinion runs counter to this constitutional prohibition in that it reinstates the personal property tax as to individuals. In addition, the new constitution provides that all ad valorem personal property taxes shall be abolished on or before January 1, 1979.

The obvious spirit of the Article IX-A amendment, the will of the people, as expressed by its adoption, and the intent and purpose of the legislature, should not be thwarted unless a construction to this effect is required. Thus, it is very appropriate that we consider the mischief sought to be remedied and the purpose to be accomplished by the Article IX-A amendment. (*Wolfson v. Avery*, 6 Ill. 2d 78, 88). Likewise, the court should memorialize the salutary rule of law that an amendment to a state constitution should be deemed violative of the Federal Constitution only where the asserted constitutional rights cannot otherwise be protected and effectuated. *Reynolds v. Sims*, 377 U.S. 533, 584, 84 S. Ct. 1362; —, 12 L. ed. 2d 506, 540.

After considering the background of this constitutional amendment and the purpose which it, along with the other contemporary legislative enactments and constitutional adoptions seeks to accomplish, I believe that the classification found in the Article IX-A amendment does not constitute an invidious discrimination; that it seeks to accomplish and promote a valid policy expressive of the will of the people and the intent and purpose of the legislature; and that the distinction upon which the classification for exemption is based does not overstep the limitations imposed by the fourteenth amendment.



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NO. 71-685, NO. 71-691

Supreme Co

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E. ROBERT SEAN

In the
Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-685

ROBERT J. LEHNHAUSEN,

Petitioner,

vs.

LAKE SHORE AUTO PARTS CO., et al.,

Respondent.

No. 71-691

EDWARD J. BARRETT, County Clerk of Cook County,
Illinois, et al.,

Petitioners,

vs.

CLEMENS K. SHAPIRO, et al.,

Respondents.

**CONSOLIDATED RESPONSE OF
LAKE SHORE AUTO PARTS CO.
TO PETITIONS FOR WRIT OF CERTIORARI
IN CASES NOS. 71-685 & 71-691**

ARNOLD M. FLAMM

ARTHUR T. SUSMAN

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Tel. (312) 346-3461

Attorneys for Lake Shore
Auto Parts Co., et al.



IN THE
SUPREME COURT OF THE UNITED STATES
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TO PETITIONS FOR WRIT OF CERTIORARI
IN CASES NOS. 71-685 & 71-691**

Pursuant to request of the Court, as transmitted in a letter from the Clerk dated February 4, 1972, Lake Shore Auto Parts Co. ("Lake Shore"), Appellant in No. 71-674 and Respondent in Nos. 71-685 and 71-691, submits herewith its Response to the Petitions for Certiorari filed by

the Director of the Department of Local Government Affairs of the State of Illinois (No. 71-685) and by various Cook County taxing officials (No. 71-691).

I.

Lake Shore surmises that the Court's request for additional responses may be for the purpose of clarifying some possible confusion as to the positions taken by the various parties to this litigation. Any such confusion is largely attributable to the circumstance that the various parties seeking or opposing review in this Court advocate at least three different views as to how the case should have been decided below.

Confusion has been compounded by the fact that the Petition in No. 71-691, in its entirety, and the Petition in No. 71-685, in large part, are devoted to non-federal questions and to issues of local public policy with which this Court presumably has no concern, and which serve only to distract attention from the important federal constitutional questions engendered by the decision of the Illinois Supreme Court.

The history of the litigation and the positions taken by the various litigants in the lower courts are set out in the opinion of the Illinois Supreme Court and need not be repeated here. It should be emphasized that both the *Maynard* case and the *Shapiro* case were filed while the original action (*Lake Shore v. Korzen*) was pending on appeal in the Illinois Supreme Court, and each was instituted in an obvious effort to influence the outcome of the *Lake Shore* case.

The parties who have filed appearances in this Court, and the positions advocated by each of them are as follows:

(1). Lake Shore, Appellant in No. 71-674, contends that both the trial court and the State Supreme Court were correct in holding that the equal protection clause of the 14th Amendment to the United States Constitution prohibits a state from discriminating, for ad valorem property tax purposes, as between property owned by corporations on the one hand, and identical property owned by "individuals" on the other hand, — at least where no rational basis for the discrimination can be shown to exist. Lake Shore contends, however, that the *remedy* adopted by the Illinois Supreme Court (in contrast to that adopted by the trial court) does raise a serious federal constitutional question. By invalidating Article IX-A of the Illinois Constitution, and thus restoring personal property taxation on all Illinois taxpayers, that Court deprived Lake Shore of the fruits of its victory. If the holding is allowed to stand it will effectively foreclose or "chill" the future enforcement of equal protection rights, at least in the field of taxation. No taxpayer will have any incentive to challenge an unconstitutionally discriminatory tax if he knows that a successful outcome will provide no significant tax saving for him.

Lake Shore's position is set forth in its Jurisdictional Statement in No. 71-674, and also in its Brief in Opposition to the *Maynard* plaintiffs' Consolidated Motion to Strike.

(2). The *Maynard* plaintiffs, who appear in this Court as alleged Appellees in No. 71-674, and as alleged Respondents in Nos. 71-685 and 71-691¹, consist essentially of

¹ For the reason set forth at page 2 of Lake Shore's Brief in Opposition to Appellees' Coonsolidated Motion to Strike, Lake Shore believes that the *Maynard* plaintiffs have no status or standing to appear in this Court.

four Cook County school districts (joined, peculiarly, by one individual who represents himself to be a "taxpayer").

The *Maynard* plaintiffs are the only parties who are satisfied with the result reached by the Illinois Supreme Court. The reason for their satisfaction is self-evident. As tax-using entities, their interest, as they see it, lies in preserving the *status quo* at all costs. The decision of the Illinois Supreme Court assures them of the continued receipt of revenues from the personal property tax on both individuals and corporations, and means that they will not have to take their chances on the state legislature finding alternative sources of revenue to replace all or any part of this traditional financing source. It is evidently of no concern to the *Maynard* plaintiffs that the People of Illinois, the Illinois General Assembly, the Governor of Illinois, the Attorney General of the State and prominent academic authorities are in unanimous agreement that the personal property tax, as administered in Illinois, is arbitrary, inequitable, disgraceful and scandalous.

The *Maynard* plaintiffs purport to concur with the position of Lake Shore as to the unconstitutionality of the discriminatory taxing scheme, — although not, of course, with Lake Shore's views as to the unconstitutionality of the remedy adopted by the Illinois Supreme Court. Lake Shore, however, does not consider the *Maynard* plaintiffs to be trustworthy allies. The reason for Lake Shore's suspicion lies in the fact that receipts from personal property taxation of "individuals" in Cook County comprise but a minute fraction of the total personal property tax yield.² The school districts would stand to lose very little if this Court

² See footnote 2 at page 2 of Lake Shore's Brief in Opposition to Appellees' Consolidated Motion to Strike.

were to reverse the Illinois Supreme Court on the substantive constitutional issue and uphold the validity of the discrimination as between corporations and individuals. In such event the school districts would continue to receive the great bulk of personal property tax revenue from corporations, including Lake Shore.

The position of the *Maynard* plaintiffs is set forth in their Consolidated Motion to Strike and Brief in Opposition.

(3). Robert J. Lehnhausen, the Director of the Department of Local Government Affairs of the State of Illinois, Petitioner in No. 71-685, represented by the Attorney General of Illinois, takes the position that the Illinois Supreme Court, and the Circuit Court as well, erred in holding that the discrimination as between corporations and individuals is violative of the equal protection clause. He would have this Court restore Article IX-A to the Illinois Constitution while leaving the taxing statute itself intact, thereby permitting personal property taxes to be assessed on the personal property of corporations but not of individuals. His position is set forth in his Petition for Certiorari. He has thus far filed no response to the Petition in No. 71-691, nor to Lake Shore's Jurisdictional Statement in No. 71-674.

(4). The Cook County taxing officials, represented by the State's Attorney of Cook County, were defendants in the case of *Lake Shore v. Korzen*, and were also named as defendants in *Shapiro v. Barrett*. They have not sought review of the *Lake Shore* case, although obviously dissatisfied with the results thereof, but have instead filed a Petition for Certiorari in the *Shapiro* case, No. 71-691. The result they urge in that Petition is essentially the same as that sought by the Attorney General in No. 71-685,